



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 34

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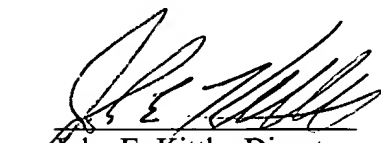
In re Application of	:	DECISION ON
Gary K. Michelson, M.D.	:	REQUEST FOR
Serial No. : 08/484,928	:	WITHDRAWAL OF
Filed : June 7, 1995	:	FINALITY OF
For : Frusto-Conical Interbody Spinal Fusion Implant	:	OFFICE ACTION

This is in response to a telephone call to the undersigned from the attorney of record, Thomas H. Martin, on November 6, 2001. During the course of the telephone conversation, applicant put forth his position that the final Office action mailed May 10, 2001 (Paper No. 30) was premature and that both that Office action and the Advisory Action mailed October 11, 2001 (Paper No. 33) were incomplete. Applicant requested that the finality of the Office action mailed May 10, 2001 be withdrawn and that applicant be provided with a complete Office action. This communication is therefore a decision on the request for withdrawal of the finality of the Office action mailed May 10, 2001.

A review of the file gives evidence that applicant's request has merit. The record shows that on September 11, 2001, applicant filed a complete response (Paper No. 32) to the above noted final Office action. That response was accompanied by a Certificate of Transmission under 37 CFR 1.8 dated September 10, 2001 and an appropriate request for an extension of time under 37 CFR 1.136 with a request that the appropriate fee be charged to applicant's deposit account. In that response applicant 1) requested that the examiner treat several untreated information disclosure statements that have been filed during the course of prosecution in this application, 2) asserted that the final rejection dated May 10, 2001 is premature for failure to properly treat all of the claims, and 3) argued the substance of the rejections. The record further shows that none of the several information disclosure statements have been addressed, the final Office action does not treat all the claims of record, the advisory action does not treat all the claims of record, and that the application otherwise warrants further consideration by the examiner.

Accordingly, the finality of the Office action mailed May 10, 2001 is hereby withdrawn and both that action and the advisory action mailed October 11, 2001 are hereby vacated. A new Office action addressing all claims of record and otherwise complete in all respects will be forthcoming in due course.

Summary: The finality of the May 10, 2001 Office action is withdrawn. Both the May 10, 2001 Office action and the October 11, 2001 advisory action are vacated.


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